

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
National Exchange Carrier Association, Inc.)	WC Docket No. 02-340
Tariff FCC No. 5, Transmittal No. 951)	

OPPOSITION TO DIRECT CASE

I. Introduction

On August 21, 2002, the National Exchange Carrier Association, Inc. (“NECA”)¹ filed the above-referenced tariff revision proposing additional security deposits from certain interstate access customers whose creditworthiness becomes “commercially unacceptable” or whose average monthly billing for a three-month period exceeds the amount used to calculate the original deposit.² On September 4, 2002, the Chief of the Pricing Policy Division of the Wireline Competition Bureau (“Division Chief”) suspended the tariff revisions for five months and initiated an investigation.³ By Order dated October 31, 2002 (“Order”),⁴ the Division Chief set forth numerous issues concerning the proposed tariff revisions and established a filing schedule for this

¹ NECA represents approximately 1,062 incumbent local exchange carriers (“ILECs”) in the United States, and prepares tariffs used by those companies. See Direct Case of the National Exchange Carrier Association, Inc., WC Docket No. 02-340, filed November 21, 2002 (“Direct Case”), at 9.

² NECA Revisions to Tariff No. 5, Transmittal No. 951, filed August 21, 2002 (“Transmittal No. 951”), at 2nd Revised Page 2-26.1.

³ *National Exchange Carrier Association, Inc., FCC Tariff No. 5, Transmittal No. 951*, Order, DA 02-2141, 17 FCC Rcd. 16532 (2002).

⁴ DA 02-2948.

proceeding. Pursuant to the Order, NECA filed its Direct Case in support of the tariff revisions on November 21, 2002.

The National Association of State Utility Consumer Advocates (“NASUCA”) hereby submits this Opposition in response to NECA’s Direct Case.⁵ NASUCA agrees that an ILEC should be allowed to protect itself from telecommunications carriers that have a poor payment history with the ILEC or that cannot establish credit. NECA’s proposed tariff revisions, however, would extend deposit requirements to interstate access customers whose usage has increased or whose creditworthiness has worsened, irrespective of the customer’s payment record with the ILEC. The proposed tariff revisions thus have anticompetitive aspects that could harm consumers.

By requiring deposits upon any increase in usage over the amount used to calculate the initial deposit, NECA’s proposal would penalize successful interexchange carriers (“IXCs”), thus creating an unreasonable barrier to remaining in the market. In addition, the extension of deposit requirements to IXCs whose creditworthiness has become “commercially unacceptable” could cause marginal IXCs to cease operations.

In either event, the proposed tariff revisions would only hasten the exit of competitors from the long distance market, and in some cases the local market, thus increasing the likelihood that consumers would lose their carrier of choice and decreasing the choices available to consumers. Therefore, NASUCA recommends that the Federal Communications Commission (“Commission”) reject NECA’s proposals.

⁵ NASUCA is an association of 42 consumer advocates in 40 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

II. Background

As described in the Order, the policy of the Commission regarding uncollectibles allows dominant ILECs to require security deposits from interstate access customers who have a proven history of late payments to the ILEC or who have not established credit.⁶ Provisions implementing this policy have become standard terms in interstate access tariffs.⁷ Required deposits generally do not exceed two months' charges.⁸ In addition, the Commission requires 30 days' notice of termination for nonpayment; 15 days is allowed if the customer receives its bill within three days after the billing date.⁹

NECA's proposed tariff revisions would significantly alter the practices discussed above. While maintaining the current deposit criteria, NECA also would expand the deposit requirements under its tariffs to include existing interstate access customers whose average monthly billing for the preceding three months was greater than the amount initially used to estimate the deposit or whose creditworthiness falls below a "commercially acceptable level," regardless of the customer's payment history with a NECA carrier.¹⁰ A customer's creditworthiness would be deemed to be below a commercially acceptable level if either of the following conditions exists:

- the customer's outstanding general debt obligations do not have a Standard and Poor's rating of at least BBB or an equivalent rating from other debt rating agencies; or
- the customer does not issue corporate debt securities, the customer does not have a composite credit appraisal rating published by Dun and Bradstreet of at

⁶ Order, ¶ 2, citing *Investigation of Access and Divestiture Related Tariffs*, Phase I Order, CC Docket No. 83-1145, 97 FCC2d 1082, 1169 (1984).

⁷ *Id.*

⁸ *Id.*, n. 6.

⁹ *Id.*, ¶ 2, citing *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-05 (1987) ("1987 Access Tariff Order").

¹⁰ *Id.*, ¶ 5.

least “good” or a Paydex score as published by Dun and Bradstreet of at least “average.”¹¹

NECA proposes that ILECs using NECA’s interstate access tariff may require an additional deposit equal to two months’ charges from any customer who meets the average monthly billing or creditworthiness criteria or who has a history of late payments with the carrier.¹² NECA also proposes to shorten the time for refusal or discontinuance of service for nonpayment from 30 days to ten days after notice.¹³

III. NECA Must Clearly Exempt Residential End Users from Its Proposed Tariff Revisions.

NECA’s proposed deposit revisions are cast in terms of commercially acceptable levels of creditworthiness for customers. Indeed, the standards included in the proposed revisions are commonly applied to businesses. Nevertheless, unlike the tariff proposals of other ILECs, which apply only to customers whose access charges reach certain minimum monthly amounts likely outside the experience of residential customers,¹⁴ NECA’s proposal has no such minimum. Thus, it is unclear that NECA’s proposed tariff revisions could not apply to residential end users.

NECA has stated that only late payment history will be considered in determining whether residential customers will be assessed a security deposit, and that clarifying tariff

¹¹ *Id.*

¹² *Id.*, ¶ 6.

¹³ *Id.*

¹⁴ SBC has proposed that its additional deposit requirements apply only to interstate access customers whose monthly billing with all SBC companies totals at least \$1 million. See *In the Matter of Ameritech Operating Companies, Nevada Bell Telephone Companies, Pacific Bell Telephone Company, Southern New England Telephone Companies, Southwestern Bell Telephone Company.*, WC Docket No. 02-319, Order, 17 FCC Rcd 19661, ¶ 5.

language will be added.¹⁵ The Commission should ensure that the clarifying language clearly excludes residential customers from NECA’s proposed deposit extension.

IV. NECA’s Proposed Tariff Revisions Would Lead to Consumers Having Fewer Choices for Service.

NECA argues that the tariff revisions are focused on “identifying specific customers that are likely to default and requiring deposits from them to help limit losses from nonpayment.”¹⁶ While not identifying those “specific customers,” NECA notes that several telecommunications companies are “teetering on the brink of bankruptcy.”¹⁷

The proposed tariff revisions could turn NECA’s concerns into a self-fulfilling prophecy. Approximately 1,062 local exchange carriers use NECA’s interstate access tariff.¹⁸ If only half opt to impose an additional deposit on a given telecommunications carrier, that carrier would be required to pay a deposit equal to two months’ access charges to more than 500 different local exchange carriers, in addition to the regular monthly payment to all carriers – including those not associated with NECA. Moreover, the proposed disconnection provision would quickly shut off the carrier’s access to the one thing it would need to exist – the ILEC’s customers. Either situation may be enough to send some of those “teetering” carriers over the edge and into bankruptcy.

In reality, end-use consumers – especially residential consumers – would be harmed most by adoption of the NECA tariffs, through decreased choices for long

¹⁵ NECA Direct Case at 21.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

distance service and, in some cases, local service.¹⁹ If the proposed deposit requirements cause an IXC to enter into bankruptcy or abandon service in some areas, consumers may lose their long distance carrier of choice. Moreover, the bundling of local and long distance service is often an attractive service offering for those few carriers that provide local exchange competition in rural areas. If the additional deposit requirements are too burdensome for these carriers, the carriers may eliminate the service. Consumers again could lose their long distance, or even local, carrier of choice.

In addition, the promise that NECA members would treat their affiliated IXCs the same as nonaffiliated carriers rings hollow. When an ILEC requires a deposit from its long distance affiliate, it merely takes the money from one corporate pocket and puts it in another. This is far different from collecting money from a nonaffiliated IXC that is in direct competition with the affiliate.

Consumers should not face the loss of a carrier of choice in order to allow NECA's members to reduce their risk of potential uncollectibles from carriers that have not missed payments. The Commission should reject NECA's proposed tariff revisions.

V. Shorter Disconnection Times Would Unduly Burden Consumers.

NECA does not justify shortening the time for disconnection. Shorter notice to carriers means that their customers will likely receive little or no notice that their service will be terminated, even though the customers are not in arrears with their carrier. NECA proposes to terminate a carrier's service ten days after the carrier fails to pay its bill or

¹⁹ Because NECA's members are rural telephone companies, they are exempt from some of the interconnection requirements found in the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56. See 47 U.S.C. § 251(f)(1)(A). However, state public utility commissions may have terminated the exemption for some NECA members under 47 U.S.C. § 251(f)(1)(B).

additional deposit on time.²⁰ The carrier is much more likely to spend its ten days negotiating with the local exchange carrier over its bill rather than informing its customers about the possibility of imminent disconnection. Few carriers would notify customers that their service is about to be terminated through no fault of their own.

Even if the about-to-be-disconnected carrier were to notify its customers immediately, the customers will likely have less than seven days after receiving the notice (assuming three-day mail delivery) to find a new carrier in order to avoid service disruption. This is unreasonably less than the 30 days' notice given customers where a carrier voluntarily discontinues service.²¹

In addition, NECA proposes to cease processing orders from a carrier upon ten days' notice after the carrier fails to pay its bill or a deposit on time.²² While the carrier will be notified that new orders will no longer be processed, there is no assurance that consumers placing orders with the carrier will be notified that their orders will not be processed. Thus, consumers may be unaware for months that their service is not being provided by the carrier of their choice. Such confusion, caused by a lack of communication, is a cause for many complaints filed at the FCC and state commissions against ILECs, competitive local exchange carriers ("CLECs") and IXC.

The Commission has recognized that "[e]ven customers with competitive alternatives need fair notice and information to choose a substitute service."²³ The standard for such notice as set forth in 47 C.F.R. § 63.71 – and reinforced in the 1987

²⁰ See Transmittal No. 951 at 2.

²¹ See 47 C.F.R. § 63.71.

²² See note 20, *supra*.

²³ *In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, Report and Order, 14 FCC Rcd 11364 (1999), ¶ 30.

Access Tariff Order – is 30 days. NECA’s proposal would unduly burden carriers’ customers. The Commission should reject the proposal.

VI. NECA Has Not Established a Need for the Proposed Tariff Revisions.

The case presented by NECA contains numerous flaws that cast doubt on the need for the proposed tariff revisions. To show the need for the proposed tariff revisions, NECA presents data showing the uncollectibles for 35 members of NECA’s Rate Development Task Force that represent approximately one third of the access lines in the NECA common line pool.²⁴ In some cases, NECA uses data from these 35 carriers to project an effect of uncollectibles on all NECA members.²⁵ In order to do that, NECA must assume that the amount of uncollectibles per access line for those 35 carriers will be similar to the amount for the other 1,027 NECA members.

This assumption is flawed. Actual per-line data can vary greatly from one company to another, even within the same state, as is illustrated by Attachment 1. For example, in Ohio, Chillicothe Telephone Company had nearly twelve times the interstate access revenue of Champaign Telephone Company (“Champaign”) during 2001 while having only three times the number of access lines as Champaign.²⁶ On the other hand, McClure Telephone Company had more than eight times the interstate access revenue of Middle Point Home Telephone Company, despite having fewer access lines. Thus, the validity of many of NECA’s calculations is suspect.

²⁴ Direct Case at 2. It is unclear whether the 35 member carriers constitute the entire task force.

²⁵ See, e.g., *id.* at 14.

²⁶ See Attachment 1, which shows revenue data and line counts from the annual reports of NECA members filed with the Public Utilities Commission of Ohio. The reports do not separate intra- and interstate access uncollectibles. Nevertheless, since uncollectibles are generally tied to revenue, revenue data likely shows the variation in interstate uncollectibles for these companies.

Moreover, many of the NECA carriers' problems lie at their own doorsteps. The 35 ILECs used for NECA's uncollectibles calculation send a letter of nonpayment on average 69 days – more than two months – after a bill has become delinquent.²⁷ Given that less than five percent of bills were disputed, this is an extremely long amount of time.²⁸ Timelier notices to carriers would reduce the risk to NECA members. Indeed, NECA itself noted that several companies are reviewing their customer payment procedures “to improve the timeliness of notices.”²⁹

In addition, one of NECA's exhibits shows that much of the distress in the interexchange market is actually caused by ILECs. The lead paragraph in the report from RHK, Inc. (“RHK”) notes

Emerging inter-exchange carriers (EIXCs) restructuring in the wake of bankruptcy could continue to drive traffic prices down in order to obtain traffic volume and revenue. If widespread, this practice could pose a threat to incumbent IXC's, *especially since ILECs are now winning a substantial share of consumer long-distance traffic and contracting with EIXCs to transport this traffic.*³⁰

The real threat, according to the RHK report, is to incumbent IXCs, with ILECs actually benefiting from the collapse of CLECs:

Reemerging EIXCs could pose a threat to IXCs because of their ability to significantly underprice the commodity long-haul transport market. Emerging CLECs pose much less of a challenge to ILECs due to their niche customer focus and smaller size. The large number of assets mired in bankruptcy leads us to believe that some of them will ultimately be left for liquidation.³¹

²⁷ Direct Case at 9.

²⁸ *Id.* at 10.

²⁹ *Id.* at 9, n. 6.

³⁰ *Id.*, Exhibit D, PR Contact, Distressed Assets Could Pose a Threat to IXCs, RHK, Inc. (2002) at 1.

³¹ *Id.*

When NECA's direct case is put in perspective, NECA has failed to show a need for the proposed tariff revisions. The Commission should reject NECA's proposal.

VII. Conclusion

Allowing ILECs to require additional deposits from, and shorten disconnection periods for, interstate access customers who continue to pay their bills on time would have a serious adverse affect on carriers, and especially their customers. NECA has not demonstrated that its proposed tariff revisions are necessary. The Commission should reject NECA's proposal.

Respectfully submitted,

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ATTACHMENT 1

NECA Member Company	2001		Revenue Per Access Line (\$)
	Interstate Access Revenue (a) (\$)	Access Lines	
Arthur Mutual Tel Co	\$ 372,408	1,421	\$ 262
Ayersville Tel Co	300,412	1,214	247
Bascom Mutual Tel	187,520	770	244
Benton Ridge Tel Co	446,397	1,298	344
Buckland Tel Co	107,885	871	124
Champaign Tel Co	1,695,164	12,211	139
Chillicothe Tel Co	12,474,266	36,564	341
Conneaut Tel Co	1,310,666	7,935	165
Doylestown Tel Co	750,045	4,160	180
Farmers Mutual Tel	(b)	(b)	(b)
Ft. Jennings Tel Co	241,237	986	245
Germantown Indep Tel	757,594	4,510	168
Glandorf Tel Co Inc	94,110	1,219	77
Kalida Tel Co Inc	371,729	2,016	184
McClure Tel Co	829,829	767	1,082
Middle Point Home	98,172	873	112
Minford Tel Co	647,033	3,233	200
New Knoxville Tel Co	274,312	1,236	222
Nova Tel Co	582,681	1,380	422
Ottoville Mutual Tel	305,747	1,616	189
Pattersonville Tel	146,193	400	365
Ridgeville Tel Co	146,918	820	179
Sherwood Mutual Tel	294,436	1,349	218
Sycamore Tel Co	679,168	2,223	306
Telephone Service Co	1,624,499	11,331	143
Vaughnsville Tel Co	158,293	421	376
Wabash Tel Co	120,801	1,328	91

Source: 2001 Annual Reports to PUCO.

(a) Excludes End User revenue.

(b) 2001 not available.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Direct Case was served by first-class mail, postage prepaid, to the party identified below on this 5th day of December 2002.

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